

1                   IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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4       MOHAMAD E. TAHA (Deceased),       )

5               and                               )

6       SANAA M. YASSIN, his wife,       ) Case No.

7               Plaintiffs,                   ) 17-1174T

8                               vs.                   )

9       UNITED STATES OF AMERICA,       )

10              Defendant.                   )

11

12

13   Suite 716

14               Howard T. Markey National Courts Building

15                               717 Madison Place, N.W.

16   Washington, D.C.

17   Friday, December 6, 2019

18   2:30 p.m.

19   Hearing

20

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22                               BEFORE:   THE HONORABLE CHARLES F. LETTOW

23

24

25       Transcribed by:   Matthew P. Tate, CERT

Mohamad E. Taha, et al. v. USA

12/6/2019

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1 P R O C E E D I N G S

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3 (Proceedings called to order, 2:29 p.m.)

4 THE COURT: Mr. Taha, would you identify  
5 yourself for the record as the representative of the  
6 Plaintiffs?

7 MR. TAHA: Yes, Your Honor. Ali Taha.

8 THE COURT: Thank you.

9 And, Ms. Kanyer, would you identify yourself  
10 for the record as counsel for the Government?

11 MS. KANYER: Elizabeth Kanyer for the United  
12 States.

13 THE COURT: Thank you. We have in hand the  
14 United States' motion in limine to exclude the testimony  
15 of Joseph Dianto (phonetic). I'm not sure I'm  
16 pronouncing that right.

17 MR. TAHA: Joseph Dianto.

18 THE COURT: Dianto?

19 MR. TAHA: Yes, sir. Yes, Your Honor.

20 THE COURT: All right. Thank you. And the  
21 United States' motion for an emergency hearing on the  
22 subject, which the Court obviously has granted through  
23 the scheduling of this conference.

24 Ms. Kanyer, would you restate your position for  
25 the record.

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1 MS. KANYER: Sure, Your Honor. We are asking  
2 the Court to exclude the testimony of Joseph Dianto for  
3 three reasons. First, it was not -- the subpoena was not  
4 properly served. Mr. Dianto has not, in fact, received  
5 the subpoena, and it was not -- so it was not personally  
6 served. There were no fees tendered with that service.  
7 And the rules do require personal service, and it does  
8 require it to, in fact, be served to the named party. So  
9 we request on that grounds that the Court exclude Mr.  
10 Dianto's testimony.

11 If the Court were to find that it was properly  
12 served, which we don't think it was, we would ask the  
13 Court to quash the subpoena because it did not allow  
14 reasonable time to comply, as Mr. Dianto has not, in  
15 fact, actually received the subpoena, but was only even  
16 notified either Monday or Tuesday after we spoke. He is  
17 actually not in Philadelphia, where we believe it was  
18 served -- or it was mailed. He lives in Atlanta, which  
19 is more than 400 miles from where trial is scheduled, and  
20 he's not a party or a party officer. So we believe it  
21 would incur substantial burden and expense.

22 In addition, reason number two, Mr. Dianto  
23 is not listed in Plaintiffs' pretrial memorandum of  
24 intention of law. In fact, the Court, in its April  
25 10th scheduling order, required Plaintiffs to list

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1 their witnesses. Plaintiff did not list any witnesses,  
2 and they did not list Mr. Dianto, and they have not  
3 sought leave to amend their witness list. And so we  
4 believe that they violated the Court's order, and we ask,  
5 again, that the Court would exclude the testimony of Mr.  
6 Dianto.

7 Reason number three is we believe that's he's  
8 not relevant. I spoke with him this morning. He does  
9 not know anything about the Tahas or this case. You  
10 know, he was managing at that time in 2006, you know,  
11 3,500 employees. Documents were regularly generated with  
12 his name. So we don't believe he would have any relevant  
13 testimony. The documents that Plaintiff referenced are  
14 all in relation to a year that was dismissed, tax year  
15 2004.

16 And, finally, this is a de novo proceeding. So  
17 we don't believe that he's relevant. So in sum, Your  
18 Honor, we have -- for those three reasons, we believe  
19 that the testimony should be excluded.

20 THE COURT: Mr. Taha, I take it you really want  
21 Mr. Dianto's testimony because he might have percipient  
22 -- or be a percipient witness as to the bad debt aspect  
23 of the refund claim. Is that correct?

24 MR. TAHA: Yes, Your Honor.

25 THE COURT: You do have other evidence, though,

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1 that relates to the bad debt aspect. Is that correct?

2 MR. TAHA: That is correct, but the major  
3 evidence of owner is a 2004 amended tax return that was  
4 filed within the seven-year statute, to which Mr. Dianto  
5 determined it was correctly filed.

6 THE COURT: We're really dealing with 2003 at  
7 this point.

8 MR. TAHA: No --

9 THE COURT: I'm sorry. Go ahead.

10 MR. TAHA: No, Your Honor. We are dealing with  
11 the whole claim.

12 THE COURT: That is --

13 MR. TAHA: 2002 and 2003 as amended, or 2004  
14 inclusive of 2002 and 2003 as you, Your Honor, confirmed  
15 during the April 5th telephonic conference that we're  
16 going to deal with this as a de novo.

17 THE COURT: That's --

18 MR. TAHA: A brand new trial for the whole  
19 claim --

20 THE COURT: That is true.

21 MR. TAHA: -- regardless whether it was filed  
22 in 2002 and 2003 or both years amended and 2004, to which  
23 Mr. Dianto determined it was correctly filed.

24 THE COURT: We are dealing with it as a de novo  
25 claim, and it does relate to refund claims that were

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1 filed after the original returns were submitted. So the  
2 Court confirms that. One of the problems is that the  
3 subpoena appears not to have been properly issued. And  
4 if the Court had concerns that there were no other way  
5 for evidence of the bad debt aspect to be adduced at  
6 trial, then I would have a concern about the ability of  
7 the trial itself, but I am actually of the view that you  
8 have other means of getting bad debt evidence in at  
9 trial, Mr. Taha.

10 MR. TAHA: Yes, Your Honor, you are correct,  
11 but that evidence which I have provided, and I'm going to  
12 provide again in court during trial -- I'm sorry. During  
13 trial, I will provide that evidence again, but out -- and  
14 that evidence, Your Honor, was ignored -- respectfully --  
15 ignored by Defendant and the Court. It was -- that  
16 evidence was never, ever mentioned, Your Honor, in any  
17 order or in any motion that Defendant filed.

18 THE COURT: Well, I understand that, but on the  
19 other hand, we are trying the bad debt aspect of this  
20 thing de novo. So you can adduce whatever evidence or  
21 put forward whatever evidence you have on that particular  
22 subject. I'm sure Ms. Kanyer would accept that  
23 proposition.

24 Ms. Kanyer?

25 MS. KANYER: That's correct, Your Honor.

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1 THE COURT: All right. I think we're on the  
2 same page, but --

3 MR. TAHA: Your Honor?

4 THE COURT: Yes.

5 MR. TAHA: Would you explain this -- what you  
6 asked Ms. Kanyer that -- are you asking her about the  
7 claim in full for both 2002 and 2003 individually filed  
8 or for 2004 that was inclusive of the 2002 and 2003?

9 THE COURT: It has to --

10 MR. TAHA: Your Honor, let me define 2004  
11 income tax -- amended income tax for tax refund. 2004,  
12 the reason it was filed or reconsidered in lieu of 2002  
13 and 2003 claims was because 2004 was the year within  
14 which the income -- shareholder income became bad debt.  
15 That is the only reason. Otherwise either claim is  
16 correct.

17 THE COURT: Well, I -- there's no doubt, at  
18 least based on what the Court knows, but we have to prove  
19 it at trial, that the promissory notes became worthless  
20 in 2004. Well, at least, they became worthless in 2006,  
21 but in any event, they probably became worthless in 2004,  
22 as well. We can deal with that at trial. That's not  
23 really an aspect of the dispute at issue, as the Court  
24 understands it.

25 But on the other hand, the Court is prepared to

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1 be educated at trial about what the circumstances really  
2 were as these years were transpiring.

3 MR. TAHA: Do I understand, Your Honor --

4 THE COURT: Yes?

5 MR. TAHA: -- that the promissory note has a  
6 life?

7 THE COURT: Well, I'm sure it did. It probably  
8 doesn't anymore.

9 MR. TAHA: No. My question, Your Honor, does  
10 the promissory note have a life when it is issued?

11 THE COURT: Well, I'm sure it had a life, but  
12 the question is whether or not it -- and Ms. Kanyer can  
13 elaborate, but we can do this at trial, as well --  
14 whether it actually constituted a bad debt or not. She  
15 has raised arguments about whether or not it really was a  
16 retention of capital.

17 Ms. Kanyer?

18 MS. KANYER: That's correct, Your Honor.

19 MR. TAHA: Okay. Your Honor, let me respond,  
20 please.

21 THE COURT: Yes, certainly.

22 MR. TAHA: The promissory -- the intent of the  
23 promissory note was to prove that Shareholder Taha was  
24 owed money, and that money was lost. It's not to prove  
25 the bad debt, per se, specifically. That was not the

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1 intent. There is -- there were promissory notes that  
2 started being issued by Atek in -- for 1996 when Atek was  
3 established. Do these notes have any value? Of course  
4 not, not anymore, but the value of the promissory note is  
5 to prove that the debtor owes money to the shareholder in  
6 this case.

7 THE COURT: That --

8 MR. TAHA: It's not to prove the bad debt, Your  
9 Honor.

10 THE COURT: That, we can address at trial. We  
11 also, insofar as the bad debt is concerned, have to  
12 address the nature of the promissory notes, and we have  
13 to address the nature of the bankruptcy and I almost  
14 think the dissolution proceedings. I'm not sure Atek was  
15 ever formally dissolved. It just ceased functioning, but  
16 we'll have to cover all that at trial.

17 MR. TAHA: Atek does not exist, Your Honor,  
18 anymore.

19 THE COURT: Good.

20 MR. TAHA: So it dissolved.

21 THE COURT: All right. That we have to cover  
22 at trial.

23 MR. TAHA: Sure.

24 THE COURT: But the Court will grant the motion  
25 in limine to exclude the testimony of Joseph Dianto,

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1 primarily because the subpoena, at this juncture, is  
2 improper, and it's not readily apparent that Mr. Dianto's  
3 administrative views on the subject have any bearing on  
4 the de novo trial of the issues that we have before us.  
5 So we don't expect Mr. Dianto to appear as a witness at  
6 trial in response to the subpoena. If he comes  
7 voluntarily, that's another matter, but the Court is  
8 dubious that that will happen. Okay.

9 Ms. Kanyer, anything further?

10 MS. KANYER: One administrative point. We had  
11 talked, I believe on Monday, about Plaintiffs' exhibits.  
12 We just wanted to let you know that we -- in printing our  
13 exhibits for trial, we have also printed a set of  
14 Plaintiffs' exhibits for the Court, the Court's clerk,  
15 and also the witness box.

16 THE COURT: That is very gracious of you, and  
17 I'm sure Mr. Taha appreciates it, as well.

18 MR. TAHA: Thank you.

19 Your Honor?

20 THE COURT: Yes?

21 MR. TAHA: I believe, if I recall right, you  
22 requested three copies to be presented in trial for the  
23 exhibits?

24 THE COURT: That's exactly what Ms. Kanyer has  
25 just stated.

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1 MR. TAHA: I'm sorry. I didn't -- I just  
2 wanted to confirm that, on my side, that I do present  
3 three copies -- one for the Court, one for Ms. Kanyer,  
4 and one for the court reporter, I believe.

5 THE COURT: Well, that's not necessarily right.  
6 Ms. Kanyer indicates she has copied already what you had  
7 put forward as your exhibits.

8 Ms. Kanyer, is that correct?

9 MS. KANYER: That's correct. Based on our  
10 conversation from Monday, I was not clear whether or  
11 not Plaintiffs were going to be able to provide copies.  
12 And so since we were printing copies for ourselves, we  
13 figured we could go ahead and print them for the Court  
14 and the witness, and I believe we have five copies that  
15 will be coming. It's either four or five copies that  
16 are printed and on their way to Tampa as we speak.

17 THE COURT: Mr. Taha, does that answer your  
18 question?

19 MR. TAHA: In a way, yes, it does, but I  
20 thought initially that you, Your Honor, indicated that  
21 whatever was provided in the memorandum of contentions  
22 would not be used.

23 THE COURT: Well --

24 MR. TAHA: Therefore, you requested a fresh,  
25 new copy of the exhibits, and that's what I was working

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1 on.

2 THE COURT: Oh, I don't think you have to work  
3 on it because it sounds like Ms. Kanyer has already done  
4 it for you.

5 MR. TAHA: Okay. If that's acceptable to you,  
6 Your Honor, that's fine with me, too.

7 THE COURT: All right. I think we're good all  
8 the way around.

9 MR. TAHA: Because I'm confused, sorry.

10 THE COURT: No, I just think Ms. Kanyer has  
11 done us a bit of a good turn here by making sure that we  
12 have what we need in Tampa for the trial.

13 MR. TAHA: And that's appreciated, Your Honor.  
14 I thank Ms. Kanyer about that. And so that saves me  
15 money.

16 THE COURT: It will, and also aggravation.

17 MR. TAHA: And aggravation.

18 THE COURT: All right.

19 Ms. Kanyer?

20 MR. TAHA: I do sound aggravated, don't I, Your  
21 Honor?

22 THE COURT: Oh, no, I think we're fine. Okay.  
23 I think we're ready, and we'll see each other in Tampa at  
24 the appointed place at 9:30 in the morning.

25 Anything further?

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1 MS. KANYER: No, Your Honor.  
2 MR. TAHA: Your Honor?  
3 THE COURT: Yes?  
4 MR. TAHA: Maybe -- maybe just a little note,  
5 short note --  
6 THE COURT: Yes?  
7 MR. TAHA: -- about the opening statement?  
8 THE COURT: Yes?  
9 MR. TAHA: I think you mentioned some time  
10 limitation of 15 minutes.  
11 THE COURT: That's correct.  
12 MR. TAHA: If it goes 16, 17 minutes, it's not  
13 going to be acceptable.  
14 THE COURT: Well, I urge you not to do that  
15 because we have, you know, two days allocated for trial,  
16 and we ought to stick to a fairly concise time frame, but  
17 what we need to do is to get all the testimony and  
18 evidence in. The Court generally understands the case as  
19 it stands.  
20 MR. TAHA: Well, Your Honor, the reason I'm  
21 asking is because I'm facing multiple defendants here and  
22 support by the Court. And I'm facing 12 years of the  
23 life of the claim, with six IRS centers. So, Your Honor,  
24 I have to spell all of this out in my opening statement.  
25 It's a must.

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1 THE COURT: Well, I understand --  
2 MS. KANYER: Your Honor?  
3 THE COURT: Yes, Ms. Kanyer?  
4 MS. KANYER: I just wanted to mention that  
5 David Pincus just stopped by. So I wanted to announce  
6 him for the record.  
7 THE COURT: All right.  
8 MR. PINCUS: Sorry I'm late, Judge.  
9 THE COURT: I'm sorry, what was that, Mr.  
10 Pincus?  
11 MR. PINCUS: Sorry I was late. I wanted to get  
12 a clean bill of health before I went down there, which I  
13 do.  
14 THE COURT: All right. I must say, Mr. --  
15 MR. TAHA: I'm having problems hearing you,  
16 Your Honor, but that's okay.  
17 THE COURT: All right. Mr. Taha, it is  
18 difficult to move around Washington today. It was  
19 difficult last afternoon and evening, as well. It's just  
20 that there are different causes. Today, there are sets  
21 of protests in and around Washington, and there are other  
22 things going on. But in any event, I think we're ready  
23 for trial. And if you go a minute or so over, Mr. Taha,  
24 that's not going to pose a problem.  
25 MR. TAHA: Okay, Your Honor. Thank you so

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1 much. And just to let you know and Ms. Kanyer, sometimes  
2 I will experience hearing because I wear hearing aids.  
3 So just for you to -- this should not be on the record,  
4 but I've already said that I do get problems hearing at  
5 times.

6 THE COURT: All right. That's not an unusual  
7 circumstance for people, and we'll take that into account  
8 at trial.

9 MR. TAHA: Especially with my age.

10 THE COURT: All right. Thank you. Okay.

11 MR. TAHA: You sound young, Your Honor.

12 THE COURT: No, I try to act young, but I'm  
13 not. But in any event, we'll just take it as it goes.

14 MR. TAHA: Well, Ms. Kanyer is obviously very  
15 young, too.

16 THE COURT: I'm sure she thinks so, too.

17 MS. KANYER: I won't comment on that, Your  
18 Honor.

19 THE COURT: Whether she acts that way is  
20 another matter. All right. Thank you.

21 MR. TAHA: Well, we need to spice our  
22 conversation sometimes, Your Honor.

23 THE COURT: Okay. Thank you.

24 MR. TAHA: Thank you.

25 THE COURT: Yep. Bye.

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1 MS. KANYER: Bye.

2 MR. PINCUS: Thank you.

3 (Whereupon, at 2:46 p.m., the hearing was  
4 adjourned.)

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1 CERTIFICATE OF TRANSCRIBER

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3 I, Matthew P. Tate, court-approved transcriber,  
4 certify that the foregoing is a correct transcript from  
5 the official electronic sound recording of the  
6 proceedings in the above-titled matter.

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10 DATE: 12/19/2019 s/Matthew P. Tate  
11 MATTHEW P. TATE, CERT

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